

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	David H. Coar	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99 C 2785	DATE	3/12/2002
CASE TITLE	Vardon Golf Co. vs. Karsten Mfg. Corp.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] For the reasons stated in the attached Memorandum Opinion and Order, Vardon's motion to substitute the '951 patent into the case is denied in its entirety. [Doc. #150].
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

David H. Coar

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials vg(lc)	Date/time received in central Clerk's Office	8 number of notices	Document Number 173
			MAR 14 2002 date docketed	
			<i>[Signature]</i> docketing deputy initials	
			3-13-02 date mailed notice	
			<i>[Signature]</i> mailing deputy initials	

and there can also be no infringement under the doctrine of equivalents.

Id. at 10 (internal citations omitted). Accordingly, this court granted Karsten's motion for summary judgement on the two claims containing the term "substantially uniform thickness." Id.

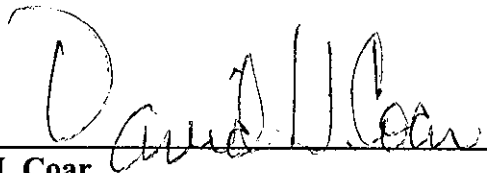
Shortly thereafter, Vardon surrendered the '941 patent and obtained a reissued patent ("the '950 patent"). Vardon then brought suit against Karsten alleging that Karsten infringed claim 22 of the '950 patent. Claim 22 does not contain the limiting term "substantially uniform thickness." Karsten answered the complaint. In an action before Judge Kocoras, Vardon then sought to amend its complaint to include allegations of infringement of claims 12-21 of the '950 patent, as well as identify several other accused clubs. Claims 12-21 all include the "substantially uniform thickness" limiting term construed by this court in Vardon I. Judge Kocoras held that Vardon was collaterally estopped from amending its complaint to include claims 12-21 of the '950 patent. Vardon Golf Co. v. Karsten Mfg. Co., No. 00 C 7221, 2001 WL 1117391 (N.D. Ill May 9, 2001) ("Vardon II"). Judge Kocoras reasoned that while Vardon had every opportunity to preserve its ability to appeal or actually appeal the decision in Vardon I, Vardon chose to do nothing. Therefore, Judge Kocoras held in Vardon II that Vardon had had an opportunity to litigate fully and fairly the construction for the term "substantially uniform thickness" and it may not "have a second bite at the apple" by amending its complaint. Vardon II, 2001 WL 1117391, *5.

On May 25, 2001, Vardon submitted to this court a Motion to Partially Vacate the Court's Memorandum Opinion and Order Dated September 7, 2000 (the "5/25/01" motion"). In the 5/25/01 motion, Vardon requested this court to vacate its September 7, 2000, decision as it relates to the '941 patent "in light of extraordinary circumstances which have left Vardon without

the ability to appeal the [September 7, 2000 Opinion and Order].” Id. at pg 2. Vardon argued that if this court were to vacate its September 7, 2000 decision, Vardon may then seek reconsideration of Judge Kocoras’ decision and could also “file a new (third) action – one which could not be issue precluded . . .” Id. at pg 5. This court denied Vardon’s motion in a Minute Order issued on May 31, 2001.

Vardon once again seeks to substitute the ‘950 reissue patent into the case before this court. Having already decided the issue in the May 31, 2001 Minute Order, this court sees no reason to waste additional resources and time in reconsidering issue which have already been presented. Therefore, Vardon’s motion to substitute the ‘951 patent into the case is denied in its entirety.

Enter:



David H. Coar
United States District Judge

Dated: March 12, 2002